

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 15



CROFT METALS, INC.¹

Employer

and

Case No. 15-RC-8393

INTERNATIONAL BROTHERHOOD OF
BOILERMAKERS, IRON SHIP BUILDERS,
BLACKSMITHS, FORGERS, AND HELPERS,
AFL-CIO

Petitioner

SUPPLEMENTAL DECISION

On May 1, 2002,² subsequent to a representation hearing held on April 15, the Region issued the initial Decision and Direction of Election in this matter in which it directed an election in the following unit:

Included: All production and maintenance employees employed at the Company's Magnolia manufacturing facility, including material inventory clerks, plant clerical employees, inter-plant driver, and lead persons.

Excluded: All over-the-road truck drivers, quality control employees, office clerical employees, professional and technical employees, plant nurse, corporate traffic records lead person, corporate traffic records clerk, personnel technician, CAD technician, accounting and payroll clerk, production control clerk, watchmen, guards, and supervisors as defined in the Act.

¹ The name of the Employer appears as amended at the hearing.

² Unless otherwise noted, all dates are 2002.

Pursuant to that Decision, an election was scheduled for May 29. Thereafter, the Employer filed a request for review of the Decision, contending that it had not been given adequate notice of the April 15 hearing. Additionally, the Employer argued on review that the Region erred by (1) finding that the Employer's leadmen and lead supervisors were not statutory supervisors, (2) including material inventory clerks in the petitioned-for production and maintenance unit as "plant clericals," (3) voting three other clerical employees under challenge, (4) including the interplant driver in the unit found appropriate, and (5) failing to find that Southern Council of Industrial Workers, Carpenters Local 2280 had not been given proper notice of the hearing.

On May 29, the election was conducted and, at the direction of the Board, the ballots were impounded while the Board considered the issues raised by the Employer's request for review. On June 21, in *Croft Metals, Inc.*, 337 NLRB No. 106 (2002), the Board issued its Decision on Review, in which it announced a requirement that parties to a representation case be given 5 working days notice of representation hearings and remanded this matter to the Region to reopen the hearing to receive additional evidence on the other issues raised by the Employer. Accordingly, on July 8, the hearing was reopened and, prior to the close of the hearing on this same day, both parties were given the opportunity to present evidence. On July 29, I erroneously issued a Second Decision and Direction of Election in which I directed an election. Inasmuch as the election had already been held in the same unit, on July 31, I issued an Order Revoking the Second Decision and Direction of Election. This Supplemental Decision is being issued in its place.

Upon the entire record³ in this proceeding, the undersigned finds:

³ The Employer timely filed post-hearing briefs.

1. The Employer contends that the Hearing Officer erred by allowing the Petitioner to participate in the reopened hearing. The Employer maintains that because the Petitioner did not file a request for review of the Region's May 1 Decision and Direction of Election, it waived the right to participate further in this matter. The Employer cites no authority for this contention. The Board's June 21 Decision remanding the matter for further hearing did not provide that the Petitioner would be precluded from presenting evidence at the reopened hearing. It is well established that in pre-election representation proceedings it is the responsibility of the hearing officer to develop a full and complete record. In the instant matter, the hearing officer's decision to allow both parties to participate was consonant with this objective. I thus find that the Hearing Officer did not err by allowing the Petitioner to participate in the hearing and present evidence. As discussed above, on review of the Region's May 1 Decision and Direction of Election, the Employer argued that the Region erred by failing to find that Carpenters Local 2280 had not been given proper notice of the April 15 hearing. In its post-hearing brief, the Employer, for the first time, contends that the record in this matter is incomplete in that it does not contain any evidence that Carpenters Local 2280 has disclaimed interest in representing employees involved in the instant matter. The record shows that Carpenters Local 2280 was the exclusive bargaining representative of employees of the Employer in the following contractual bargaining unit:

All production and maintenance employees employed at Company's Magnolia Manufacturing facility, including plant clerical employees, interplant drivers, and lead persons; excluding over-the-road truck drivers, quality control employees, office clerical employees, professional and technical employees, watchmen, guards, and supervisors as defined by the National Labor Relations Board in Case Number 15-RC-4641.

Official notice is taken of the proceeding in Croft Metals, Case No. 15-RD-826, in which, by letter dated March 29, Carpenters Local 2280 filed a disclaimer of interest in continuing to

represent the Employer's employees. Based on this disclaimer, the RD petitioner, an individual, requested that the decertification petition be withdrawn. Accordingly, on April 11, the Region issued an Order Approving Withdrawal of Petition noting that Carpenters Local 2280 had engaged in no action inconsistent with the disclaimer of interest. This Order was served upon the Employer. Neither the Order nor the disclaimer of interest were placed into evidence during either the initial or reopened hearing. It should be noted that during the July 8 hearing, the Employer neither argued that the record was deficient due to its failure to include the March 29 disclaimer nor objected to the Hearing Officer's decision to close the reopened hearing at its conclusion. Charles Coleman, president of Carpenters Local 2280, testified on the Petitioner's behalf during both the initial and reopened hearings. At no time did Coleman indicate that Carpenters Local 2280 wished to intervene in this matter or that Carpenters Local 2280 was in any way wronged by not receiving formal notices of the hearings in this matter. Moreover, the Employer does not contend that Carpenters Local 2280 has an interest in this matter or that it has a collective-bargaining agreement with Carpenters Local 2280 that would constitute a bar to an election. Nor has the Employer maintained that Carpenters Local 2280 has taken action that would be inconsistent with its March 29 disclaimer of interest. The absence in the record of a copy of Carpenters Local 2280's disclaimer of interest and the April 11 Order Approving Withdrawal of petition does not warrant reopening the record. Based on the appearance of Carpenters Local 2280 at the hearings as well as its unquestioned disclaimer of interest, it is obvious that any failure to formally notify Carpenters Local 2280 of the hearing dates is of no moment.

2. The record shows that the Employer, Croft Metals, Inc. is a Mississippi Corporation with its principal place of business located in McComb, Mississippi. The Employer

is engaged in the manufacture of aluminum and vinyl doors and windows at its manufacturing facility located in McComb, Mississippi, the only facility involved herein. During the past 12 months, a representative period, the Employer purchased and received at its McComb, Mississippi facility goods valued in excess of \$50,000 directly from points located outside the state of Mississippi.

Based upon the record as a whole, I find that the Employer is engaged in commerce within the meaning of Section 2(6) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The Employer does not contest the labor organization status of the Petitioner. However, it refused to stipulate that it was a labor organization as defined by Section 2(5) of the Act.

The record reveals that the Petitioner is the collective-bargaining representative of approximately 100,000 employees in the United States and Canada. It has various local lodges. Delegates from these lodges elect the Petitioner's international officers, and employees participate in and are members of the local lodges. The record further shows that the Petitioner has negotiated collective-bargaining agreements with various employers and employer associations. In *Alto Plastics Manufacturing Corp.*,⁴ the Board held that:

In order to be a labor organization under Section 2(5) of the Act, two things are required: first, it must be an organization in which employees participate; and second, it must exist for the purpose, in whole or in part, of dealing with employers concerning wages, hours, and other terms and conditions of employment.

⁴ 136 NLRB 850, 851-852 (1962).

The record shows that the Petitioner meets both these criteria. The Petitioner exists, in whole or in part, for the purpose of collectively bargaining on behalf of employees throughout the United States and Canada and engages in grievance-handling on behalf of the employees it represents. The record also shows that employees participate in the Petitioner's organization. Based upon the above, I find that the Petitioner is a labor organization under Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain of the Employer's employees.

5. As noted above, in its May 1 Decision, the Region found appropriate the production and maintenance unit set forth in the opening paragraph of this Supplemental Decision. During the reopened hearing, the parties were given the opportunity to submit additional evidence in support of their contentions regarding the unit. For the reasons described below, I reaffirm the unit determination set forth in the May 1 Decision. The positions of the parties are set forth below.

The Petitioner seeks to represent a unit of all production and maintenance employees employed at the Employer's manufacturing facility in McComb, Mississippi, including plant clerical employees, the inter-plant driver, and lead persons; excluding all over-the-road truck drivers, quality control employees, office clerical employees, professional and technical employees, watchmen, guards, and supervisors as defined by the Act.

The Employer contends that the following classifications/employees should be excluded from the unit: 1) lead persons because they are statutory supervisors; 2) the material inventory clerks and Patricia Greenlee, Diane Strawbridge and Gwen Sandifer because they are office clerical employees; and 3) the inter-plant driver because he lacks a sufficient community of interest with the stipulated unit.

With regard to the supervisory hierarchy at the Facility, the record shows that the Employer has a plant manager who reports directly to the vice president and director of manufacturing. The vice president and director of manufacturing reports to the President of the company. There are approximately 20 to 25 admitted supervisors over the approximately 350 employees in the unit the Petitioner seeks to represent. These supervisors report directly to the plant manager. Some of the departments in the plant operate multiple production lines that operate side by side. A supervisor may be responsible for a large department that has multiple lines or two or more departments that cover multiple lines.

LEAD PERSONS

As noted above, the Employer contends that the lead persons are supervisors within the meaning of Section 2(11) of the Act. There are 25 to 30 lead persons who report directly to one of the admitted supervisors. The lead persons fall into the classifications of load supervisor, specialty lead person, lead person (A), and lead person (B). The load supervisor is responsible for loading the merchandise on trucks for shipping to customers. Typically, the specialty lead person is an individual assigned to one of the various higher technical departments, which include the tool room, extrusion department, and machine shop.⁵ In comparison to Lead Person "B", the Lead Person "A" is a higher-level lead person.

a. Load Supervisors

Employee Leo Holmes testified that he is employed by the Employer as a lead person "A" in the shipping department and is sometimes referred to as a load supervisor. Holmes is one of

⁵ It appears that other departments have specialty lead persons assigned to them, but the record is silent as to the name of these departments. In addition, the record is silent as to the total number of specialty lead persons employed by the Employer.

four employees assigned to a particular truck. One employee brings the merchandise to the truck; Holmes counts and scans the merchandise; and the other two employees stack the merchandise inside the truck. Holmes spends his day working at the truck's location with the other three employees. He receives an order indicating how a truck is to be loaded. When the truck has to make more than one delivery, merchandise is loaded on the truck in the order of the delivery schedule. On a daily basis, Holmes instructs three employees on where and how to place the merchandise.

Holmes testified that he has a higher pay rate than the other three employees he works with but that he was uncertain as to how much the other three employees earn. The record is silent as to Holmes' rate of pay.

Holmes' supervisor is Wilma Martin. For at least three months, she has not worked due to an illness. He believes that Plant Manager Harvey Driver has filled in for Martin during this period.

Holmes does not have the power to grant time off, hire, fire, discipline, transfer, lay off, or recall from layoff any employee. He is not involved in the process of interviewing individuals for employment and plays no role in determining where new employees will work. He does not attend supervisors' meetings. Although Holmes is not involved in the evaluation process for probationary employees, his supervisor has asked for his recommendation as to whether a probationary employee should be retained. However, he does not recall any time in which his supervisor agreed with his recommendation. However, he recalls recommending that the Employer not retain certain employees and asserts that the Employer, nonetheless, elected to retain those individuals. In calendar year 2002, the Employer has not asked Holmes for his recommendation concerning the retention of probationary employees.

Holmes has never verbally reprimanded employees regarding their work. In the past, Holmes has complained to his supervisor about some of the workers in his crew. To his knowledge, none of his complaints have resulted in any of the employees receiving a written warning or any other type of discipline.

Finally, Holmes has been a lead person "A" for the last 17 years, and during this 17 year period, was a member of the bargaining unit that was previously represented by Carpenters Local 2280.

Employee James Martin testified that he is a load supervisor and that he earns \$9.30 an hour. He spends a normal day working with his hands loading trucks. He has a crew that works with him; however, the record is silent as to the number of employees in his crew or their hourly rates of pay. He gives his crew instructions on how to load a truck and loads the product in a manner to ensure it is not damaged in transit. He learned how to load trucks through experience.

As is the case of Holmes, Wilma Martin is James Martin's supervisor. James Martin does not have any extra duties when Wilma Martin is not at work.

He does not attend supervisors' meetings, check time records, interview applicants, or hire employees. He has never disciplined employees or recommended their discipline nor does he have the authority to discipline.

b. Specialty Lead Persons

The Employer presented evidence regarding three specialty lead person positions. Employees occupying these positions work in the tool room, the extrusion department, and the maintenance department.⁶

With regard to the specialty lead person(s)⁷ in the tool room, Vice President of Human Resources Vic Donati testified that those filling this position have technical knowledge of the tool room that was acquired over a long period of time. He provided no details concerning how that knowledge was acquired. The Employer presented no evidence concerning any specific supervisory duties and/or functions of the individual(s) occupying this position.

With regard to the specialty lead person(s) in the Extrusion Department, Donati testified that the job duties for this position have evolved over time. In this regard, while those occupying this position formerly supervised production employees, they are now chiefly responsible for the actual operation of the presses and ovens in the Extrusion Department. Donati further testified that over the years, the Employer has paid to send the specialty lead person(s) to training seminars in preventive maintenance, the operation of oil gear, and the use of the dye shop. The record contained no testimony or evidence as to any specific supervisory duties or functions of the individual(s) occupying this position.

With regard to the specialty lead persons in the Maintenance Department, Donati testified that these employees handle the maintenance of the plant's equipment and grounds. He

⁶ The Employer also testified that there was another specialty lead person called the corporate traffic records clerk. After the Employer presented evidence regarding this position, the parties stipulated that the corporate traffic records clerk should be excluded from the bargaining unit. I hereby approve this stipulation.

⁷ The record is silent as to the number of specialty lead persons assigned to the tool room.

further testified that these individuals are similar to crew foremen in that they assign work to employees. The Maintenance Department specialty lead persons report to the maintenance supervisor⁸. There are currently twenty (20) employees assigned to the Maintenance Department under the direction of one maintenance supervisor.⁹ The maintenance supervisor is responsible for the large construction projects and repairs, while the specialty lead persons handle work and repairs on small construction projects. The Employer asserts that the maintenance specialty lead persons earn over forty-six percent (46%) more per hour than the highest paid production employees admittedly included in the unit. However, the record does not show the hourly rate of pay for the maintenance specialty lead persons.

Donati testified that the maintenance specialty lead persons have the authority to discipline members of their crews. However, he could not recall any specific instances in which a maintenance specialty lead person exercised this authority. The record contains no evidence as to whether the Maintenance Department specialty lead persons have the power to grant time off, fire, transfer, lay off, or recall from layoff any employee. In addition, there was no evidence presented as to whether the maintenance specialty lead persons are involved in the process of interviewing individuals for employment or selecting applicants or employees to work on their crews. Finally, the record contains no evidence as to whether the maintenance specialty lead persons are involved in the process of evaluating crewmembers.

⁸ The maintenance supervisor is an admitted supervisor.

⁹ Donati did not know the exact number of specialty lead persons assigned to the maintenance department but he believed the number is less than 5.

c. Lead Persons "A" and "B"

The lead persons "A" and "B" are hourly employees who punch a time clock.¹⁰ During the term of the Employer's collective-bargaining relationship with Carpenters Local 2280, the lead person "A" and lead person "B" classifications were bargaining unit positions. In accordance with the practice established in the collective-bargaining agreement between the Employer and Carpenters Local 2280, vacancies for these positions are posted and bid¹¹ upon by hourly employees. If there is not a qualified bidder from within the company, the Employer may hire someone from outside to fill the vacancy.

Lead Persons "A" and "B" receive the same benefits as hourly employees stipulated to be in the unit. Admitted supervisors, on the other hand, receive some benefits that are not available to hourly employees. The record is silent as to what these benefits are.

Lead Persons "A" and "B" do not hire, fire, transfer, lay off or recall from layoff any employees. The record reflects that lead persons "A" and "B" have recommended for hire individuals who were hired by the Employer. However, Plant Personnel Director Leonard testified that any employee could recommend an individual for hire and that the Employer has hired individuals who were recommended by rank-and-file employees. The lead persons are not involved in the process of interviewing individuals for employment. There is no evidence that they make the schedules for employees and they lack the authority to grant time off.

Plant Personnel Director Leonard testified that employees are evaluated yearly. The record shows that some lead persons have evaluated employees' performance. Employer Exhibit

¹⁰ All the hourly employees punch a time clock. Supervisors are salaried employees and do not punch in or out.

¹¹ Supervisors are not selected through the bidding process.

17 reflects that lead person Oliver Anderson evaluated Robert Patterson on July 31, 2001 and May 23, 2002. Anderson also evaluated another employee on June 27, 2002 and reviewed the evaluation of yet another employee on March 26, 2001. Likewise, lead person Earlisha Matthews evaluated three separate employees on May 22, 2001. Lead person John Mintin reviewed another individual's evaluations of two employees on November 6, 2001. Plant Personnel Director Leonard testified that Oliver Anderson has been a lead person for three years and that he evaluates the three other employees who work in his area. The record is silent as to how long Earlisha Matthews and John Mintin have been lead persons and the number of employees assigned to their respective work areas. Although there are approximately 25 to 30 lead persons, the evidence reveals that only the above named three lead persons have participated in employee evaluations. There was no documentary evidence presented of any other lead persons participating in the evaluation process. Further, Leonard testified that to the best of his knowledge, none of the evaluations were used to grant promotions or awards.

Lead persons "A" and "B" do not discipline employees. However, when there is an incident that may result in discipline, they may take the employee(s) involved to the personnel office for appropriate action. The personnel office investigates the incident and takes the appropriate action.

Lead persons "A" and "B" are responsible for ensuring that the production lines run properly. If machinery needs repair, they may call the Maintenance Department to make the repair. Leonard testified that there are some departments in which the department supervisor is not physically present in the department and, as such, the lead person runs the department. However, Leonard did not name these departments or the lead persons and the record does not

otherwise reflect this information. Further, the record is silent as to the meaning of "running" these departments.

If a person on the production line is ill, the lead person may allow him to leave the line to receive first aid. The Employer asserts that the lead persons have the authority to permit employees to leave work early. However, Donati testified that in most cases, the lead persons must check with an admitted supervisor before allowing an employee to leave work. The record contained no examples of any instances in which Lead Persons "A" or "B" exercised independent judgment in granting time off.

The record shows that some lead persons have signed "punch detail reports," which essentially set forth when employees punch in and out. The payroll clerk uses the "punch detail reports," to calculate employees' pay. However, Leonard further testified that not all lead persons sign these reports. Also, at least one rank-and-file employee, Nettie Johnson, has signed these reports.

The record shows that some lead persons have been issued written warnings because the lead person's production line failed to produce in accordance with the Employer's expectations.

Charles Coleman testified that he has been a lead person for the last ten (10) years. For the last six (6) years, he served as the president of Carpenters Local 2280. Coleman currently works on the 1600 line, which makes doors. Coleman testified that 90 to 98 percent of his time is spent working on the line making doors. Although Coleman testified that he gives instructions to employees on the line, he gave no details regarding the instructions he gives or the factors involved in determining what those instructions will be.

Section 2(11) of the Act defines a supervisor as:

any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

In *NLRB v. Kentucky River Community Care, Inc.*, 121 S.Ct. 1863, 1867 (2001), the Supreme Court approved the Board's well-established precedent that the party asserting supervisory status has the burden of proof to establish such status. A statutory supervisor must possess at least one of the indicia specified in Section 2(11) of the Act. *NLRB v. Kentucky River Community Care, Inc.*, 121 S.Ct. at 1867; *Queen Mary*, 317 NLRB 1303 (1995); *Allen Services Co.*, 314 NLRB 1060 (1994). Moreover, a statutory supervisor must exercise supervisory indicia in a manner requiring the use of independent judgment. The Supreme Court agreed with the Board that independent judgment is ambiguous and that many nominal supervisory functions may be performed without the exercise of such a degree of judgment or discretion as would warrant a finding of supervisory status under the Act. *NLRB v. Kentucky River Community Care, Inc.*, 121 S.Ct. at 1867. If the functions set forth in Section 2(11) are exercised in a routine, clerical, perfunctory or sporadic manner, then supervisory status is not conferred. *Browne of Houston, Inc.*, 280 N.L.R.B. 1222 (1986). Isolated and infrequent incidents of supervision do not elevate a rank and file employee to supervisory level. *NLRB v. Doctors' Hospital of Modesto*, 489 F.2d 772, 776 (9th Cir. 1973). Employees who are merely conduits for relaying management information to other employees are not supervisors. *Browne of Houston, Inc.* *supra*. The Board will not consider titles alone to be determinative of supervisory status. *Marukyo U.S.A., Inc.*, 268 N.L.R.B. 1102 (1984). The Board also is careful not to construe supervisory status too broadly because a worker who is found to be a

supervisor loses his organizational rights. *Bay Area-Los Angeles Express*, 275 NLRB 1063 (1985); *McDonnell Douglas Corp v. NLRB*, 655 F.2d 932 (9th Cir. 1981).

Applying these principles to the instant case, I find that the Employer has failed to meet its burden of demonstrating that the lead persons are statutory supervisors. The record fails to establish that the lead persons have the independent authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward employees, adjust their grievances, or to effectively recommend any of the foregoing. With regard to discipline, although Coleman has made complaints regarding coworkers, there is no evidence that these complaints resulted in any personnel action. Similarly, although other lead persons may report incidents of misconduct, the Employer conducts its own independent investigation before deciding what action, if any, to take. The Board has held that the mere reporting of misconduct does not confer supervisory status if an employer conducts its own investigation prior to imposing discipline. *Ryder Truck Rental, Inc.*, 326 NLRB 1386 (1998). Although the lead persons are responsible for work within their departments, the evidence fails to establish that they use independent judgment in directing the work of other employees.¹² Holmes does not use independent judgment in loading trucks, instead the loading of the truck is essentially dictated by the delivery schedule. The evidence

¹² In its brief, the Employer cites *Aurora & East Denver Trash Disposal*, 218 NLRB 1, 10, 89 LRRM 1416 (1975) for the proposition that a foreman who claimed he was a mere conduit for the employer's orders to employees was a supervisor where he led other employees to believe he was one. That case is distinguishable. In that matter the foreman was instrumental in the termination of two employees and the owner of the company sought the foreman's opinion regarding whether or not to hire applicants for employment. In the instant case, lead persons are not instrumental in terminating employees and the supervisors do not seek their opinion regarding the hiring of applicants. The Employer also cites *Gerbes Super Market, Inc.* 213 NLRB 803, 806 (1974) for the proposition that a department manager was a supervisor where he was regarded by fellow employees as their "boss". In that case, all the department employees testified that the department manager was their boss and that he gave them permission to take whole and half days off from work. In the instant case, none of the rank-and-file employees testified that they consider the lead persons to be bosses. In addition, the lead persons cannot give employees permission to take any time off. In addition Employer cites *N.L.R.B. v. McCullough Environmental Services, Inc.* 5 F.3d 923, N.30 (5th Cir. 1993) for the proposition that an indicator of supervisory authority is whether other employees routinely seek out the individuals alleged to be supervisors for assistance in performing their duties. This case involved the issue of whether lead operators were supervisors. The facts established that the lead operators were the highest ranking employees present at the plant during the night and weekend shifts which constituted the majority of the facility's operating hours. In addition to assigning employees to specific tasks, lead operators had the authority to send employees home if they were ill. In the instant case, the lead persons are not highest ranking employees present during their shifts and cannot send employees home if they are ill. Finally, the Employer cites

further fails to establish that the lead persons make employee schedules or give employees permission to come in late, take a day off, or leave early. The record indicates that both rank-and-file employees and lead persons may recommend individuals for employment. The record does not establish that the Employer gives any grater weight to recommendations made by lead persons or that it has ever based a decision to hire solely upon the recommendation of a lead person. While some lead persons have signed time reports, the Board has held that this function is routine in nature and does not confer supervisory status. *John Cuneo of Oklahoma, Inc.*, 238 NLRB 1438, 1439 (1978). Further, as earlier noted, rank-and-file employees have also signed time reports. With respect to the lead persons' role in the evaluation process, the Board has held that the authority to evaluate employees does not elevate one to a supervisory level where those evaluations do not impact upon employees' terms and conditions of employment. *Harbor City Volunteer Ambulance Squad*, 318 NLRB 764 (1995).

Accordingly, I find that the authority of the lead persons is insufficient to render them Section 2(11) supervisors. I will, therefore, include them in the unit.

OFFICE CLERICAL EMPLOYEES

The Employer asserts that the material inventory clerk positions and the positions held by employees Patricia Greenlee, Diane Strawbridge and Gwen Sandifer are office clerical positions and should be excluded from the bargaining unit. The evidence indicates that none of these

N.L.R.B. v. KDFW-TV, Inc. 790 F.2d 1273, 1278 (5th Cir. 1986) for the proposition that since the lead persons are answerable for the discharge of a duty or obligation or is accountable for the work product of the employees they direct that they responsibly direct others. This case involved an issue of whether directors, producers, associate producers and assignment editors were supervisor. Although the evidence established that these individuals directed their co-workers, they were not held fully accountable and responsible for the performance and work product of the employees and thus, were not found to be supervisors. As in the case of the directors, producers, associate producers and assignment editors, the lead persons in the instant case do not have the authority to hire, discharge, assign, reward, reprimand and effectively evaluate co-workers.

positions were covered by the collective bargaining agreement between the Employer and Carpenters Local 2280.

a. Material Inventory Clerks

There are two material inventory clerks. One, Paula Cothorn, works in the production stock room. The other, Mary Rhodus, works in the maintenance stock room. Cothorn gives employees expendable or replacement items needed for the production lines. She also scans the labels on the products that are sent to the warehouse. Rhodus provides employees with safety equipment, tools and replacements parts for the production lines. Lead Person Holmes testified that he contacts Cothorn to find out whether a product has been made, when it was made, and what time it was made. Lead Person Coleman testified that, in order to perform his job, he contacts Rhodus daily to obtain safety equipment. Coleman further testified that members of his crew also obtain safety items from Rhodus. The material inventory clerks were excluded from the unit represented by Carpenters Local 2280. However, they are hourly employees who punch a time clock and currently receive the same benefits as other admitted unit employees.

The Board generally includes plant clerical employees in production and maintenance units. *Raytec Co.*, 228 NLRB 646 (1977). The test for whether employees are plant clerical employees is whether their duties are closely integrated with the production process. *Hamilton Halter Co.*, 270 NLRB 331 (1984). In the instant matter, there can be little doubt that the duties of Cothorn and Rhodus are an integral part of the production process. Cothorn works in the production stockroom and scans the labels on products that are sent to the warehouse. Rhodus works in the maintenance stock room and provides tools and equipment for the production lines. Both have daily interaction with unit employees providing them with equipment and other

materials. Their inclusion in the unit is further supported by the fact that they punch a time clock and receive the same benefits as unit employees. Thus, although they were excluded from the unit represented by Carpenters Local 2280, I find that their inclusion in the unit would not render it inappropriate. Thus, I will include them in the unit.

b. Patricia Greenlee

Greenlee works in the production stock room, which is located in a building separate from the main plant. Forklift drivers in the petitioned-for unit work in this building but they do not work in Greenlee's office. The record is silent as to Greenlee's specific duties and responsibilities.

c. Diane Strawbridge

Strawbridge is a lead person "A" who works in the production control office. Other than the evidence adduced regarding the general responsibilities of lead persons, the record contains no specific information concerning Strawbridge's specific duties and responsibilities.

d. Gwen Sandifer

Gwen Sandifer works in the production control office with Strawbridge and another employee. Coleman testified that he obtains labels from Sandifer every workday. The record is silent as to Sandifer's other duties and responsibilities.

The evidence submitted at the hearing is insufficient to determine whether Greenlee, Strawbridge, and Sandifer share a community of interest with the other classifications that are sought in the petition. I will, therefore, allow them to vote subject to challenge.

INTER-PLANT DRIVER

The inter-plant driver¹³ is an hourly employee who, like the production and maintenance employees, punches a clock. He spends a majority of his day moving trucks and trailers within the yard, as needed. His hourly rate of pay is less than that of a lead person. On occasion, he earns a premium when he makes a short-term, over-the-road trip. The record is silent as to the frequency of these trips. Because he is paid hourly, his method of pay differs from the over-the-road drivers who are paid based upon their time on the road and Department of Transportation regulations. He receives the same benefits as the production and maintenance employees.

Like the production and maintenance employees, the inter-plant driver is supervised by the plant manager. The inter-plant driver uses the same restroom and break room facilities as the unit employees.

It is well established that to be appropriate under Section 9(b) of the Act, a petitioned for unit need not be the most appropriate unit. Rather, it need only be *an* appropriate unit. *Overnite Transportation Co.*, 325 NLRB 612 (1998). In the instant matter, I find that the inter-plant driver shares a sufficient community of interest with the petitioned-for employees to warrant his inclusion in the unit. He is paid on an hourly basis and enjoys the same benefits and supervision as the production and maintenance employees. There can be little doubt that his duties are closely integrated with the production process. Moreover, he utilizes the same restroom and break room facilities as unit employees. I will, therefore, include him in the unit.

Accordingly, based upon the stipulations of the parties, and the record as a whole, I find the same unit appropriate under Section 9(b) of the Act as was found appropriate in the Region's May 1 Decision and Direction of Election:

¹³ The inter-plant driver was included in the bargaining unit formerly represented by Carpenters Local 2280.

Included: All production and maintenance employees employed at the Company's Magnolia manufacturing facility, including material inventory clerks, plant clerical employees, inter-plant driver, and lead persons.

Excluded: All over-the-road truck drivers, quality control employees, office clerical employees, professional and technical employees, plant nurse, corporate traffic records lead person, corporate traffic records clerk, personnel technician, CAD technician, accounting and payroll clerk, production control clerk, watchmen, guards, and supervisors as defined in the Act.

Inasmuch as an election has already been conducted in this unit, I will direct that the ballots that were impounded at the conclusion of that election be opened and counted.¹⁴

DIRECTION

It is directed that the ballots impounded at the conclusion of the election on May 29 be opened and counted.

¹⁴ This will be conditioned upon the Board's ruling on review. If no request for review of this Supplemental Decision is filed, I will direct that the ballots be opened and counted upon the conclusion of the period for filing review. In the event a request for review is filed, and review is denied, I will direct that the ballots be opened and counted after the Board denies review. If review is granted, I will direct that the Region act in accordance with the Board's decision.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by August 21, 2002.

Dated this 7th day of August, 2002, at New Orleans, Louisiana.

Rodney D. Johnson
Acting Regional Director, Region 15
National Labor Relations Board
1515 Poydras Street, Suite 610
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Date of Issuance: August 7, 2002

Classification Index Codes:

177 8560 0000 0000

400 1760 1500 0000

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15-RC-08393

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